

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF DELAWARE

3
4 IN RE ENVISION HEALTHCARE CORP.) C.A. No. 18-1068-RGA-SRF
5) CLASS ACTION
6) CONSOLIDATED SHAREHOLDER
7) LITIGATION

8 J. Caleb Boggs Courthouse
9 844 North King Street
10 Wilmington, Delaware

11 Tuesday, November 26, 2019
12 4:02 p.m.
13 Scheduling Conference

14 BEFORE: THE HONORABLE RICHARD G. ANDREWS, U.S.D.C.J.

15 APPEARANCES:

16 COOCH & TAYLOR P.A.
17 BY: BLAKE A. BENNETT, ESQUIRE

18 -and-

19 MONTEVERDE & ASSOCIATES PC
20 BY: JUAN E. MONTEVERDE, ESQUIRE

21 For the Plaintiffs

22 RICHARDS LAYTON & FINGER, P.A.
23 BY: RAYMOND J. DiCAMILLO, ESQUIRE
24 BY: JEFFREY L. MOYER, ESQUIRE
25 BY: DANIEL E. KAPROW, ESQUIRE

-and-

SIMPSON THACHER & BARTLETT LLP
BY: CRAIG S. WALDMAN, ESQUIRE
BY: JOSHUA SLOCUM, ESQUIRE

-and-

1 APPEARANCES CONTINUED:

2

3

WACHTELL LIPTON ROSEN & KATZ

4

(Via Telephone)

5

BY: RACHELLE SILVERBERG, ESQUIRE

6

BY: COREY J. BANKS, ESQUIRE

7

For the Defendant

8

*** PROCEEDINGS ***

9

DEPUTY CLERK: All rise.

10

THE COURT: All right. Good afternoon,

11 everyone. Please be seated.

12

(Everyone said, Good afternoon, Your Honor.)

13

THE COURT: This is, I guess, In Re: Envision

14

Healthcare Corporation Shareholder Litigation under the

15

caption of or case number of 18-1068.

16

All right. So I see one person that I know. So

17

why don't you all just tell me who you are starting on the

18

plaintiff's side over here.

19

MR. MONTEVERDE: Sure. Good afternoon, Your

20

Honor. Juan Monteverde of Monteverde & Associates for

21

plaintiff.

22

MR. BENNETT: Good afternoon, Your Honor. Blake

23

Bennett from Cooch & Taylor.

24

THE COURT: So I have seen you before.

25

MR. BENNETT: Yes, Your Honor.

THE COURT: All right. And on this side?

1 MR. WALDMAN: Good afternoon, Your Honor. Craig
2 Waldman and Josh Slocum, both from Simpson Thacher on behalf
3 of Envision.

4 THE COURT: All right. And Mr. DiCamillo, I
5 actually know you.

6 MR. DiCAMILLO: Good afternoon, Your Honor.
7 Good to see you. My colleagues, Mr. Moyer and Dan Kaprow
8 are here.

9 MR. MOYER: Good afternoon, Your Honor.

10 MR. KAPROW: Good afternoon, Your Honor.

11 THE COURT: Good afternoon. Dan Kaprow, are you
12 relatively new at this?

13 MR. KAPROW: Yes.

14 MR. DiCAMILLO: He's been doing it longer than
15 he will admit, Your Honor.

16 THE COURT: Okay. Well, so in any event, nice
17 to see you.

18 MR. DiCAMILLO: Rachelle Silverberg and Corey
19 Banks are on the line.

20 THE COURT: And good afternoon to you all.

21 MS. SILVERBERG: Good afternoon.

22 MR. BANKS: Good afternoon.

23 THE COURT: So you seem to have done some work
24 on this Scheduling Order because you agreed to quite a few
25 things and a couple things that you had disputes on were not

1 all that significant.

2 So actually let me just start at the back. I
3 did read through this or at least skim through this, and I
4 found paragraph 16 describing the ADR process mystifying,
5 but I assumed that you wanted to discuss the ADR process
6 during the scheduling conference, or is this just copied
7 from some other order without any thought?

8 MR. MONTEVERDE: I think we're willing to
9 discuss it. I think we also had envisioned, at least from
10 the plaintiff's side, that it's now premature to do any sort
11 of mediation, that once discovery commences, we may be in a
12 position to have private mediation.

13 THE COURT: Okay. All right. That's what this
14 means?

15 MR. WALDMAN: Yes.

16 THE COURT: Okay.

17 MR. WALDMAN: We're in agreement.

18 MR. MONTEVERDE: You agree with that? Okay.

19 THE COURT: All right. Okay.

20 Then the other thing I was curious about from
21 trying to figure out exactly what's going on here is Pages 4
22 and 5 where you talk about class certification, and the
23 plaintiffs want to do it in early 2021, and the defendants
24 want to have plaintiff do it in early 2020. Something is
25 going on here that I'm not entirely sure what it is.

1 Why are the parties so far apart on this? And
2 if somebody would care to tell me what's actually happening
3 here, why you're arguing about this.

4 MR. WALDMAN: Sure.

5 MR. MONTEVERDE: Sure. I can give you the
6 perspective from plaintiff. We feel this is our case, and
7 we should prosecute it in a timeliness that we've done in
8 other cases. I brought orders from other cases that I'm
9 litigating, and typically we don't do the class
10 certification until we're sort of done with fact discovery.

11 Defendants here are taking the position that
12 although they don't want to delay the commencement of fact
13 discovery, they want plaintiff to go first. They want to
14 bifurcate discovery.

15 THE COURT: Right. I saw that.

16 MR. MONTEVERDE: And they want the plaintiff to
17 then move immediately for class certification. They also
18 want to bring experts on class certification which I've
19 never seen in a 14A merger case that happens in 10(b)(5)
20 where you have market efficiencies and things like that.
21 You need to connect. Not present here.

22 But they haven't told us what those experts will
23 be for. We've asked, and they haven't really shared. So
24 we're at a loss.

25 But if they're going to do all that, I think

1 we're going to want to have a very good understanding of
2 facts because my guess is damages is going to come into
3 play. So I don't see how I can be moving to certify a class
4 until I have completed discovery.

5 THE COURT: What's the damages you get for a 14A
6 violation?

7 MR. MONTEVERDE: Well, the way we view it, and
8 this is viewing and following what happened in Virginia Bank
9 Shares is if we -- once we identify a misleading statement
10 as we have here, we now focus on what the company was worth,
11 and I think the valuation will be one that our expert for
12 damages will have to present to the Court. We have here a
13 company that we feel was worth more money than it was sold
14 for, and the sensitivity analysis we believe was done
15 intentionally to get you to fairness -- within fairness
16 range.

17 All the other analysis in the discounted cash
18 flow were way above the price, between five to \$6, and we
19 have, if I remember correctly, close to a hundred million
20 shares or 990 shares.

21 THE COURT: So the money, whatever money we're
22 talking about, who gets it?

23 MR. MONTEVERDE: The shareholder. The former
24 envision shareholders who were record holders as of the day
25 that they were entitled to vote. That's how you measure, if

1 you're asking me the date.

2 And that's the settlement we have done which I
3 just argued in the -- we just had an argument in the Eighth
4 Circuit that became a settlement in Transnomic (phonetic).
5 We recovered money and was paid to those who had the right
6 to vote on the record holder day of the merger. And that's
7 how the other cases that I know, I'm aware of, settlements
8 up there, that's how you're measuring damages or the date of
9 measurement, measuring the compensation.

10 So for us, we don't think that plaintiff should
11 be forced to expedite discovery to do it over the holidays,
12 start collecting documents today --

13 THE COURT: Yeah.

14 MR. MONTEVERDE: -- and be forced to move for
15 certification in February.

16 THE COURT: All right.

17 MR. MONTEVERDE: And I have orders.

18 THE COURT: Yeah. Yeah. Stop.

19 MR. MONTEVERDE: Every time I've done that --
20 yeah.

21 THE COURT: Why is it that you want to do what
22 you're proposing here?

23 MR. WALDMAN: Yeah. In order for us to take
24 meaningful discovery in the case, we want to know what the
25 plaintiff's damages theory is. The question that Your Honor

1 just asked to the plaintiffs: What are they going to pursue
2 in this case?

3 This is a unique circumstance to us. We view
4 their case as they have to allege, and I think are alleging
5 that if we had disclosed more, then the deal would have been
6 voted down. In that case, there's two possible damages
7 theories that we think the plaintiffs could pursue.

8 One is the value of the shares on the day the
9 merger was voted down. That, of course, would be less than
10 the deal price because the stock always drops if a deal is
11 voted down, or the shareholders could hold onto shares for a
12 much longer period of time. And if that's what the
13 plaintiff is alleging, then we're going to have to have an
14 understanding and do discovery of the company's performance
15 and the stock price from the time of the deal -- the vote on
16 the deal through the time of the projections, so a number of
17 year period.

18 We --

19 THE COURT: What does this have to do with
20 whether or not they certify the class in early next year or
21 early the following year?

22 MR. WALDMAN: Because in the class certification
23 motion, we would get -- right, the plaintiff would have to
24 allege some damages theory that's common across the class,
25 and that would give us an indication of what the damages

1 theory is in the case. The federal rules provide for class
2 certification to be done as soon as practical, right, for
3 the parties.

4 And in part, in this case, it's practical to do
5 it in February, or March, or April. There's one single
6 plaintiff who's going to have to produce documents. Having
7 been in many of these cases before, it's not going to be a
8 voluminous set of documents. It's going to be a very small
9 set of documents.

10 So we're asking them to produce the documents
11 and file their class certification motion so we can have an
12 understanding of what their damages theory is going to be in
13 the case. Otherwise, we're going to have to -- under lead
14 plaintiff's schedule, we'd have to go through all of
15 discovery, and then only after discovery is over would we
16 find out what their common class damages theory is.

17 That, to us, isn't an efficient way to do
18 discovery, Your Honor.

19 MS. SILVERBERG: Your Honor, this is Rachelle
20 Silverberg for Wachtell, I would just reiterate that Rule 23
21 sets a time frame. And under Rule 23(c)(1), it provides
22 that for class certification "at an early practical time
23 after a person sues or is sued as a class representative,
24 the Court must determine by order whether to certify the
25 action as a class action."

1 And given that provision, we believe that we're
2 entitled to have the Court determine whether or not
3 plaintiff is entitled to class certification without having
4 to wait until the end of the entire discovery process.

5 And again, as Mr. Waldman noted, we do not
6 expect there to be extensive discovery from the plaintiff.
7 The plaintiff is an individual; and therefore, we think that
8 it's certainly reasonable to ask that plaintiff commence his
9 production and complete it in about two to three months with
10 the Court then determining class certification shortly
11 thereafter in the briefing in the matter.

12 So what we are proposing, we believe, is
13 consistent with what Federal Rule 23(c) provides and has
14 also been done in other Section 14A cases. I know
15 Mr. Monteverde said that he had examples in which the
16 parties in those cases did agree to do class certification
17 at a later date, but there are also other examples, and I
18 believe Mr. Waldman has them, of Scheduling Orders in 14A
19 cases such as this in which the Court did agree to hear
20 class certification before the completion of that discovery.

21 THE COURT: I heard 23(b)(1).

22 MS. SILVERBERG: (c)(1).

23 THE COURT: Sorry, that's what I meant, (c)(1).

24 Yes. Thank you.

25 MR. MONTEVERDE: (c)(1).

1 THE COURT: I'm just curious, do both sides
2 agree that's the kind of class that we're talking about
3 here, or is there a possibility of (c)(2) or (c)(3)?

4 MR. MONTEVERDE: No. Well, I think what they're
5 talking about, this will be a 23(b)(3) class, an opt-out
6 class. I think (c)(1) speaks as to the timing, and I have a
7 case --

8 THE COURT: Wait. Wait. Hold on a minute.

9 MR. MONTEVERDE: Sure.

10 THE COURT: Yeah. Sorry.

11 MR. MONTEVERDE: I have --

12 THE COURT: I don't do too much of this, so I'm
13 getting the B's and the C's mixed up. But is this a (b)(3)
14 class?

15 MR. MONTEVERDE: Yes, and I have a hard copy of
16 the statute, if it's easier for the rule. I mean --

17 THE COURT: Hey, I'm an E judge.

18 MR. MONTEVERDE: But the case I was going to
19 talk about is a Fourth Circuit case from 2016, and that's
20 been the rule interpretation. There was an amendment to
21 23(c)(1) to now be at an hourly practicable time as opposed
22 to, as it used to be, as soon as practicable. And the Court
23 has interpreted that it's recognized there is a need for
24 thorough valuation of Rule 23 factors, and for this reason,
25 the rule does not require or encourage premature

1 certification termination. And that's what defendants are
2 asking the Court to do here.

3 If they're going to fight certification, and
4 damages is the problem that they see, and they don't think
5 we've alleged sufficient facts, I think discovery on that
6 needs to happen first --

7 MS. SILVERBERG: And Your Honor --

8 MR. MONTEVERDE: -- at a minimum.

9 MS. SILVERBERG: -- the proposed order that we
10 submitted to the Court expressly addresses the issue that
11 Mr. Monteverde raises. Our Proposed Scheduling Order
12 provides for plaintiff to move for class certification
13 before the completion of fact discovery at the end of
14 February and then provide a time frame for defendants to
15 file their opposition brief, including any expert reports.
16 And there's a very express fail-safe which is if, after
17 defendants file their responsive papers, plaintiff believes
18 that he needs additional fact discovery in which to submit
19 his reply, including any rebuttal affidavit, either by
20 consent of the parties or through order of the Court, the
21 plaintiff need not submit his reply papers until the
22 completion of fact discovery.

23 And what that structure does is it, number one,
24 complies with Rule 23(c)(1) in terms of setting up an
25 initial schedule that would allow for early determination of

1 class certification. But if during the briefing, it turns
2 out that plaintiff is correct in terms of what he needs, we
3 do not believe he will be, but if that turns out to be
4 correct, then it provides for an extension of the schedule
5 on class certification to ensure that plaintiff has the
6 information he says he needs.

7 MR. MONTEVERDE: So the way we look at that,
8 Your Honor, is defendants are trying to complicate things
9 and make us come to Court more and more than necessary
10 because that's going to require motion practice. What we're
11 asking is what we've done in every case, both in Delaware
12 Chancery Court as well as throughout the country in federal
13 cases challenging merger cases or merger transactions, and
14 that is all discovery should happen at the same time.

15 Let us do paper discovery of the defendants.
16 Let defendants do paper --

17 THE COURT: Well, see, that's a different
18 question, whether all the discovery should happen at the
19 same time than whether or not there should be early class
20 certification; right?

21 MR. MONTEVERDE: No, because I would then say
22 once paper discovery happens, then we should have all the
23 depositions. Plaintiff can go first, but it's at that time
24 that we should be doing the depositions. Because if we're
25 doing class certification now, they're going to want

1 plaintiff's deposition immediately. That's why they're
2 going to -- they're going to ask for that as part of their
3 opposition papers or as part of their timing to oppose.

4 And that's what is provided in their proposed
5 schedule. So they're bifurcating. They want plaintiff to
6 do all discovery first, plaintiff to seek certification.
7 And then only then, defendants get to put witnesses and
8 produce documents in the late spring. And what --

9 THE COURT: But I don't have to agree to that.
10 I could say --

11 MR. MONTEVERDE: You could --

12 THE COURT: -- you do class certification early,
13 you know, February of next year. There is delay built in if
14 delay needs to happen, but you can go ahead and ask for
15 discovery right now. They can ask for discovery.

16 Presumably, in fact, whatever discovery they ask
17 of your client won't be hard to respond to. It may be
18 harder for them to respond to discovery he asks of them.

19 Even if I do the early class certification
20 motion, why shouldn't I have all discovery happening at the
21 same time?

22 MR. WALDMAN: The schedule currently
23 contemplates that, I believe, plaintiff can ask us for
24 discovery and will ask us for discovery now, and we'll start
25 producing documents. Because it's a single plaintiff and so

1 little documentary discovery will be received from the
2 plaintiff, we've put in a date of February 19th, 2020 for
3 the plaintiff to substantially complete.

4 We, Envision, and the individuals who have a lot
5 more discovery, so we've given until May to complete ours,
6 but we certainly contemplate that discovery will be going on
7 on both sides.

8 MR. MONTEVERDE: So I just don't see, Your
9 Honor, how it's fair for plaintiff when they know we know
10 they're going to attack damages to not have, at a minimum,
11 the ability to finish paper discovery. So I understand
12 perhaps the compromise that perhaps Your Honor can envision
13 is let us do paper discovery, finish it in the spring or
14 early summer, then let's have class certification late
15 summer or early fall, and then do the depositions in early
16 fall.

17 Plaintiff can go first. And that way, I think
18 that perhaps is sort of a compromise. It's not what I was
19 looking to. It's not what I've done in other cases, but
20 perhaps that splits the baby, so to speak, and we don't have
21 to be in Court every other month now with issues which is
22 what I envision will happen. Because if we have different
23 dates, and let's say they don't agree with our objections,
24 that's one motion on my compel or compelling my response.
25 Then with their cutoff at a later time, that I'm going to

1 have my objection or my motion to compel based on their
2 objections at a later time. We're essentially going to be
3 here every other month.

4 What I'm suggesting is a more practical which is
5 what I've done in every other case I have. On the same
6 track --

7 THE COURT: All right.

8 MS. SILVERBERG: Your Honor, if I may just
9 respond to that briefly?

10 THE COURT: No. No. No. Ms. Silverberg,
11 generally I do prefer the arguments to be done by the people
12 who are here. So let me just think about this for a minute.

13 You know, there's a lot of talk here about
14 privilege logs. Does plaintiff expect to have a privilege
15 log here?

16 MR. MONTEVERDE: We haven't been propounded with
17 any discovery, so I don't know what they're going to ask
18 for. I think that was just as part of a customary
19 provision.

20 THE COURT: Okay.

21 MR. MONTEVERDE: But I don't -- all I can
22 imagine is if they ask, for example, for communications with
23 counsel involved regarding our retention, they may ask for
24 emails, maybe we would. I don't know if they're going to,
25 but if they did, I would envision that being privileged.

1 MR. WALDMAN: If there are privileged documents
2 in what's responsive, we would want a log. It's hard to
3 know whether there's an email that has an unprivileged and a
4 privileged portion. I don't know whether there will be or
5 not.

6 MR. MONTEVERDE: I think they're being safe
7 putting it in.

8 MR. WALDMAN: But if they are, we would like it
9 approximately two weeks after the substantial completion,
10 and we're willing to do the same thing on our side if he --

11 THE COURT: Well, so here's what I want to do:
12 I'm not going to have all sorts of interim deadlines that
13 are different for the plaintiff than they are for the
14 defendant. There should be symmetry in terms of the timing
15 and the requirements, but I also have trouble imagining why
16 the plaintiff with their thicket of cases where they've done
17 this before, why damages theories that would be relevant to
18 whether or not you certify a class, you know, have to be
19 teased out to the end.

20 So with that in mind, Mr. Monteverde, if I'm
21 going to have you do the class certification motion without
22 waiting around for a year, is there some reason why it
23 should be January?

24 MR. MONTEVERDE: I think May is the deadline.
25 Everyone agreed May 29th, 2020 to be the deadline of

1 substantial completion of paper discovery.

2 THE COURT: Well, so class certification, let's
3 move things back a month. You know, there's no reason for
4 you to be having to file your motion on January 8th. That
5 seems like a particularly inopportune time.

6 So you know, in paragraph 4, you can move those
7 dates. Oh, I'm sorry. That's the wrong year.

8 MR. WALDMAN: Yes, Your Honor.

9 THE COURT: Sorry. Sorry. Sorry. I thought
10 that was --

11 MR. MONTEVERDE: No, they had it teed up.

12 MR. WALDMAN: We had --

13 THE COURT: No, I was looking at the wrong --

14 MR. MONTEVERDE: Right.

15 THE COURT: -- page. Yeah, okay.

16 February 28th, 2020, is there some reason why you can't do a
17 motion by that time?

18 MR. MONTEVERDE: Because the reason I have is
19 that I know they're going to come, and I don't know yet.
20 They haven't told us what the experts are for on class
21 certification, but I can envision they're going to try
22 something similar to a 10(b)(5) case, that we're going to
23 need documents. And if we're not going to have substantial
24 completion of those until May 29th, 2020, I don't think we
25 can put forth the theory that they're saying we need to put

1 forth.

2 THE COURT: Well, you know --

3 MR. MONTEVERDE: That's.

4 THE COURT: -- just reading the rule literally,
5 as early as a practicable time --

6 MR. MONTEVERDE: Right.

7 THE COURT: -- it seems to me that
8 February 28th, which is, after all, three months from now,
9 you know, you can --

10 MR. MONTEVERDE: I don't see --

11 THE COURT: -- get documents if you want. I
12 don't know what kind of documents you need --

13 MR. MONTEVERDE: Well --

14 THE COURT: -- but that's not what we're here to
15 decide right now. So I'm going to adopt the defendant's
16 schedule for doing class certification which is on Page 5.

17 MR. MONTEVERDE: Well, could we move it a little
18 bit at least because I do know we're going to need some
19 documents.

20 THE COURT: When you say "move it a little bit
21 at least," what did you have in mind?

22 MR. MONTEVERDE: Well, if they're going to
23 produce a list of banker records and some of the basic
24 financial documents that we can at least use, so I'm
25 assuming we'd probably get them sometime in January or early

1 February. And we may need to discuss them internally, and
2 we may need an expert in that regard, so I think maybe late
3 or mid-April.

4 THE COURT: Yeah, that seems reasonable. So
5 I'll give you -- add in 45 days to everything there. Okay?

6 And in terms of the document production, so both
7 sides agree document production should be substantially
8 complete by May 29th?

9 MR. MONTEVERDE: Sure.

10 THE COURT: They seem to have the same dates for
11 privilege logs.

12 MR. WALDMAN: Your Honor, in order to take
13 Mr. Monteverde's client's deposition in conjunction with
14 class certification, we will need his client's documents
15 before.

16 THE COURT: Well, so ask for them. He's
17 supposed to respond in 30 days. As you say, he's only going
18 to have a handful; right?

19 MR. WALDMAN: Okay.

20 MR. MONTEVERDE: Yes.

21 THE COURT: I mean, how hard is it?

22 MR. WALDMAN: It's not a challenge if the
23 plaintiff will produce them for the deposition.

24 THE COURT: You know, you all at least have an
25 excuse. You're asking for hundreds of thousands of

1 documents.

2 MR. WALDMAN: Yes.

3 THE COURT: You already said he's only going to
4 have a handful. If you ask for what you need, he's got very
5 little reason not to provide them, you know, within the
6 rules.

7 MR. MONTEVERDE: Yeah, the only thing I can
8 imagine is an extension, courtesy extension. So if they
9 produce them today, if they send me a discovery request
10 today --

11 THE COURT: Yeah.

12 MR. MONTEVERDE: -- they are Christmas day.

13 THE COURT: I think they will probably not
14 demand that you produce them on Christmas day.

15 MR. MONTEVERDE: I envision a couple courtesies
16 there.

17 MR. WALDMAN: Of course.

18 THE COURT: Okay. So basically the part about
19 early discovery, that's just knocked out so that probably
20 won't have any actual impact. The deposition discovery,
21 plaintiff says they want 18. Defendant says they want 14.

22 Is there some magic as to how you came up with
23 your different numbers?

24 MR. MONTEVERDE: Yes.

25 MR. WALDMAN: Yes, I think there was just a

1 little bit; right?

2 MR. MONTEVERDE: Well, I know there's 12 named
3 individuals, and they're going to raise state of mind, so
4 that potentially means we may need everyone there. Then you
5 have, if I recall correctly, three investment bankers who
6 were working on fairness opinions. It may be that we just
7 need one banker, or it may be that we end up --

8 THE COURT: Okay. I'll give you the 18.

9 MR. MONTEVERDE: Thank you. The one --

10 THE COURT: So basically just take plaintiff's
11 language and cross out defendant's. Was there anything else
12 in here that was actually disputed?

13 MR. MONTEVERDE: Well, if I may go back on the
14 class certification, not the dates, especially if we have to
15 do things earlier than we expected, they haven't told us
16 what these experts are for. I think I would like to hear
17 what their experts are going to be here for so we can be
18 more productive.

19 MR. WALDMAN: We'd have to know what the class
20 is in order to tell you what experts we're using, right. So
21 when you tell us what the class is, we'll talk to you about
22 who our experts are.

23 MR. MONTEVERDE: Well, we've talked about the
24 class is those who had the right to vote on the record
25 holder date.

1 THE COURT: Okay. Why don't you all try to work
2 that out. If you've got experts that you're planning on
3 using, I think you should be telling him who they are
4 without it being held against you if you choose not to use
5 them.

6 MR. MONTEVERDE: So could we put a date that so
7 if we're going to be moving for class certification in
8 mid-April, could they tell us by mid-February who they
9 think? I mean --

10 THE COURT: Mid-March.

11 MR. MONTEVERDE: -- or mid-March?

12 MR. WALDMAN: Your Honor, would this be
13 reciprocal? Would we get an understanding of who --

14 MR. MONTEVERDE: Sure.

15 THE COURT: I think he has in mind using some
16 experts. Yeah, it should be reciprocal.

17 MR. MONTEVERDE: For class certification, it is?

18 MR. WALDMAN: For class certification.

19 MR. MONTEVERDE: Sure.

20 MR. WALDMAN: Our opposition will be opposing
21 your motion, so we might need a little bit of time once we
22 hear who your expert is and what their theory is to tell you
23 who our expert is, but we're happy to have a meet and confer
24 and try to get together and talk.

25 THE COURT: But I think it would just help all

1 around --

2 MR. WALDMAN: Understood.

3 THE COURT: -- to have a reciprocal disclosure.

4 MR. MONTEVERDE: So will that -- by March 15th,
5 parties -- you want to do a reciprocal exchange? We don't
6 intend -- as I sit here today, I had not envisioned experts
7 in a class certification. I haven't seen it in any of my
8 other cases or my colleagues' other cases, so I was at a
9 loss.

10 THE COURT: Okay. Well, if you don't have any,
11 it will be easy.

12 MR. WALDMAN: Yeah.

13 MR. MONTEVERDE: So by March 15th, we'll
14 exchange experts --

15 MR. WALDMAN: We'll tell you --

16 MR. MONTEVERDE: -- or identify --

17 MR. WALDMAN: We'll tell you what topics we
18 intend to offer expert testimony without waiver. If we see
19 something in your motion that's different --

20 MR. MONTEVERDE: Correct.

21 MR. WALDMAN: -- we need to be able to do that.

22 MR. MONTEVERDE: I'm okay with that.

23 MR. WALDMAN: Thank you.

24 THE COURT: Okay. So I think the only other
25 things that you need from me are a trial date and a pretrial

1 date.

2 So based on what you've submitted, the trial
3 date that I had here was October 4th of 2021. And the
4 pretrial conference was September 17th of 2021 at 2:00 p.m.

5 MR. MONTEVERDE: I'm sorry. September 17th?

6 THE COURT: 17th.

7 MR. MONTEVERDE: Thank you.

8 MR. SLOCUM: You said 2:00 p.m.?

9 THE COURT: 2:00 p.m. So do you think you can
10 take this order, and what I've said here, and reduce it to
11 one writing that I can sign?

12 MR. WALDMAN: Yes, Your Honor.

13 MR. MONTEVERDE: Yes, definitely. Thank you.

14 THE COURT: All right. Well, I've got something
15 else at 4:30, I believe. So nice to meet you all. Nice to
16 see those of you who I see infrequently, but I have seen
17 before.

18 And I'll look forward to this sometime next
19 week. I don't know who submitted this one. Whoever
20 submitted presumably will resubmit it.

21 Thank you.

22 (Everyone said, Thank you, Your Honor.)

23 (Scheduling conference was concluded at
24 4:32 p.m.)

25 I hereby certify the foregoing is a true and

1 accurate transcript from my stenographic notes in the
2 proceeding.

/s/ Heather M. Triozzi
Official Merit Reporter
U.S. District Court